

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE
BECHEN, ELVIRA BUMPUS,
RONALD BIENDSEIL, LESLIE W.
DAVIS, III, BRETT ECKSTEIN,
GLORIA ROGERS, RICHARD
KRESBACH, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON,
JEANNE SANCHEZ-BELL, CECELIA
SCHLIEPP, TRAVIS THYSSEN,
CINDY BARBERA, RON BOONE,
VERA BOONE, EVANJELINA
CLEERMAN, SHEILA COCHRAN,
MAXINE HOUGH, CLARENCE
JOHNSON, RICHARD LANGE, and
GLADYS MANZANET,

Plaintiffs,

Case No. 11-CV-00562
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE and
RONALD KIND,

Intervenor-Plaintiffs,

Members of the Wisconsin Government
Accountability Board, each only in his
official capacity: MICHAEL
BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY,
Director and General Counsel for the
Wisconsin Government Accountability
Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,
THOMAS E. PETRI, PAUL D. RYAN,
JR., REID J. RIBBLE, and SEAN P.
DUFFY.

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in his
official capacity: MICHAEL
BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, TIMOTHY
VOCKE, and KEVIN KENNEDY,
Director and General Counsel for the
Wisconsin Government Accountability
Board,

Defendants.

**Declaration Of Kevin Kennedy In Support Of The Defendants' Motion For
Protective Order**

I, Kevin Kennedy, under the penalty of perjury under the laws of the United
States of America, declare and state as follows:

1. I am the Director and General Counsel for the Wisconsin Government Accountability Board ("GAB"). I make this declaration based on personal knowledge and in support of Defendants' Motion for a protective order.

2. I have received and reviewed Plaintiffs' Second Set of Interrogatories and Second Request for Production of Documents.

3. Interrogatory No. 10 asks when the defendants first became aware of "anomalies" described in a news article. If by "anomalies" the Interrogatory means errors with the 2010 census, defendants first became aware of census errors sometime in the Fall of 2011 after Acts 43 and 44 were enacted into law. Defendants first became aware of census errors when county or municipal clerks brought the issue to our attention.

4. Defendants do not know whether the State Legislature was aware of these census errors before Acts 43 and 44 were enacted into law.

5. Defendants have known about errors with the census for decades. It is well known that the census is neither accurate nor complete.

6. Every ten years, as part of the decennial Census, the U.S. Census Bureau collects demographic and geographical information across the country and compiles the data for use by states, counties, and municipalities to draw new district lines. The census data is broken down by census blocks, which provide the basic building block for electoral districts. Census blocks contain population and demographic information necessary to draw constitutional maps. The boundaries for the census blocks frequently follow administrative boundaries such as

municipal and school boundaries and physical features such as roads and waterways. In Wisconsin, census blocks are used to build wards, State Assembly, State Senate, and Congressional districts. The geographic information that results from the census, including census blocks, roads and waterways, municipal and school boundaries, and other geographical data sets maintained by Census are provided to states in the form of Topologically Integrated Geographic Encoding and Referencing ("TIGER") map files.

7. In Wisconsin, the Census TIGER map files and demographic information are loaded into a tool called WISE-LR, which is administered by the Legislative Technology Services Board ("LTSB"). WISE-LR is then used by the State Legislature to draw legislative and congressional redistricting maps. After municipalities have adopted wards and counties have adopted supervisory districts, these are loaded into WISE-LR.

8. Historically the census data used by the State Legislature or federal three-judge court panels to draw redistricting maps has been inaccurate and incomplete. My understanding is that these inaccuracies stem from three primary sources.

9. First, the census itself (that is, the counting of people by the Census Bureau) is never entirely accurate. The Census Bureau misses some people during its count.

10. Second, the boundary lines in the geographical maps used by the census are not always accurate. The Census Bureau openly acknowledges this. According to the U.S. Census Bureau website (www.census.gov), the boundaries in the TIGER map files are for Census Bureau statistical data collection and tabulation purposes only. As a result, when superimposing TIGER maps over more accurate political subdivision maps, the census blocks sometimes appear in the wrong political subdivisions, or straddle them.

11. Third, the census is outdated as soon as it is released to the public. In the intervening period between when the census is released and the redistricting maps are drawn by either the State Legislature or federal three-judge panel, as in 1982, 1992 and 2002 (which can be almost two years in some cases), some people have moved, other people have died, babies have been born, non-voting age citizens have become of voting age, and some boundary lines have shifted through annexations.

12. After every redistricting, it is a challenge for defendants and municipal and county clerks alike to reconcile the maps which the court or State Legislature has drawn using the flawed census data with the "reality" on the ground. There were widespread complaints that the TIGER data from the 2000 Census was inaccurate in both geographical and administrative boundaries. Specifically, when the TIGER data was overlaid with actual municipal boundaries, road lines and bodies of water, the TIGER data did not match the municipal

boundaries. This further became apparent during the 2011 State Senate recall elections in Wisconsin where addresses that were challenged as being outside a district based upon the legislative maps were confirmed as valid district addresses based on more accurate information from the Statewide Voter Registration System ("SVRS").

13. Based on information gathered from state and local GIS authorities thus far relating to the 2011 redistricting, there appears to be consensus that the TIGER data from the 2010 census was more accurate in terms of geography (roads, waterways) than it was in 2000. However, the data still contains inaccuracies with boundaries, specifically municipal and school district boundaries. These inaccuracies include several issues, such as correct boundaries but that are appearing in the wrong place on the map, annexations that occurred prior to the 2010 census but were not included in the TIGER 2010 dataset, annexations that occurred after the 2010 census was taken and could therefore not be included in the 2010 TIGER dataset, or other general inaccuracies.

14. Aside from the above census issues, there are other changes that were made to the Statewide Voter Registration System (SVRS) that impact how voters are assigned to districts, and ultimately how poll books are generated. These changes, which have garnered some press coverage lately, including the news article referenced in Plaintiffs' Interrogatory 10, concern changes defendants made to the SVRS system to switch from an "address range" based system for

assigning voters to districts to using Geographic Information System (GIS) technology. In the past, when municipal and county clerks entered the names and addresses of new voters into the SVRS, the addresses would be matched against the address ranges stored in SVRS. Address ranges consist of every street in the state, with a low and high house number to indicate which portions of the street fall within which election districts. The relationship between the voter's address and the address range that it falls within determined the electoral districts to which the voter would be assigned. The combination of districts that the voter was assigned to is referred to as a "District Combo" in SVRS. If an address did not fall within one of the address ranges in SVRS, the voter could not be automatically assigned a district combo. Clerks would either manually assign the voter to the correct district combo, or they would update the address ranges in SVRS accordingly so that the voter could be automatically assigned to districts. This was frequently done in response to new construction that created new streets, or if boundary lines were adjusted due to annexations, or other miscellaneous corrections to ensure the address ranges were accurate. Poll books are then generated in SVRS based on the voter's district assignments.

Under the new system, addresses are assigned a "geocode", which refers to the geographic coordinates for the point on a map where that address appears. District boundaries are stored in SVRS as maps. The relationship between the point of the address and where it falls within the district maps now determines the

voter's district combo. SVRS is not always able to obtain a valid geocode for every address. This can also be due to new construction, and addresses that do not yet appear in the USPS database. This can also occur for non-standard or rural addresses. In the new system, addresses in SVRS are validated against software that corrects addresses to USPS standards and generates a geocode. If an address cannot be validated or geocoded, the clerk can manually assign the voter to a district combo, or they use a simple mapping tool to move the pinpoint for the voter's address to the correct location on the map. In some cases, as was reported in the news article, addresses that do not have a valid geocode may appear near the prime meridian on the map. However, the address can still be corrected manually by the clerk, either by manually assigning the voter to a district combo, or by moving the pin to the correct location on the map. The district maps that were loaded into SVRS that determine which district the address geocodes fall within came from two sources – either from WISE-LR, which, as described above, is census-block based, or from local GIS systems maintained by municipalities and counties, which are generally parcel based, and of survey-level accuracy. If the boundary line in SVRS falls in the wrong place on the map, the clerks correct these by manually assigning the voters in the impacted area to the correct district combo. A new version of SVRS, which will be available in Spring of 2012, will allow clerks to move boundary lines in SVRS if they are appearing in the wrong place. For municipalities and counties who provided G.A.B. with district maps from their local GIS systems, these corrections can be made in the local GIS

system and then directly imported into SVRS. As a result of the switch in SVRS from address ranges to GIS technology, clerks and defendants have had to work diligently to correct the district assignments for thousands of voters to make certain they are in the districts and appear on the correct poll books when they vote. While this process has been challenging and has attracted some unfavorable press attention, including the news article referred to in Plaintiffs' Interrogatory 10, the end result will benefit Wisconsin as we will have more accurate voter information.

15. Plaintiffs' Interrogatory Number 11 asks defendants to "Identify every person with whom any GAB member or employee has communicated, verbally or in writing, about the "anomalies" described above and to further describe the substance of those communications." There are 72 county clerks and 1,851 municipal clerks in Wisconsin. Defendants have likely had some sort of communication with each of those clerks about census errors since the fall of 2011. In addition, defendants have likely had conversations about the errors with (1) numerous county and municipal Geographic Information Systems specialists or other technical people; (2) the Legislative Reference Bureau, and (3) the Legislative Technology Services Bureau. As a result, there are likely tens of thousands of documents on defendants' computer database that would need to be retrieved and reviewed to respond to this request.

16. Plaintiffs' Interrogatory Number 15 which asks for the identity of "every person with whom any GAB member or employee has communicated, verbally or in writing" about the "implementation of Act 43 and 44" would create the same burden as Interrogatory Number 11.

17. Plaintiffs' Request for Production Number 15 asks defendants to produce "every document that discusses, describes, or relates to the "anomalies" referred to in Interrogatories Nos. 10 and 11." Again, that would likely require defendants to retrieve tens of thousands of documents and review each of them for responsiveness.

18. What Plaintiffs have requested is extraordinarily burdensome, will require considerable time to accomplish and would be done at significant expense. And, if the discovery is allowed, defendants will likely be forced in response to search for documents that were created ten years ago to show the court that the 2002 court plan contained the similar types of census errors. This will impose additional burdens on defendants.

19. Defendants are already facing considerable challenges, which are straining its resources. On Tuesday, January 17, 2012 defendants expect that six recall petitions will be filed containing approximately 1.5 million signatures that the GAB must carefully examine under Wisconsin law and in accord with a recent state court order. As a result of those obligations alone, defendants will be forced

to hire approximately 50 additional employees and devote substantial resources exclusively to recall matters. Additionally, due to the voter identification law recently passed, defendants must spend considerable efforts working with local community groups and providing information to the general public. Under these circumstances, if the Court is inclined to allow such discovery, defendants respectively request that plaintiffs pay for all the expenses associated with searching for and retrieving such data.

Executed on this 16th day of January, 2012.

A handwritten signature in black ink, reading "Kevin J. Kennedy". The signature is written in a cursive style with a horizontal line underneath it.

Kevin Kennedy
Director and General Counsel
Wisconsin Government Accountability
Board